

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

CHARLESTON

EXECUTIVE ORDER NO. 2-07

By the Governor

WHEREAS, during the 2007 Regular Session, the Legislature enacted Enrolled Committee Substitute for Committee Substitute for Senate Bill No. 442 (hereinafter referred to as "Senate Bill No. 442"), which significantly amended the law governing the grievance process for public employees and education employees; and

WHEREAS, as part of Senate Bill No. 442's revision of the existing grievance process, the Education and State Employees Grievance Board was discontinued and the existing statutory provisions setting forth the standards and procedures for public employee grievances were repealed; and

WHEREAS, in place of the existing board and the existing statutory provisions, Senate Bill No. 442 created the West Virginia Public Employees Grievance Board and established a new West Virginia public employees grievance procedure; and

WHEREAS, as Senate Bill No. 442 neared completion of the legislative process, the effective date of the Bill was made "in effect from passage"; and

WHEREAS, as a result of Senate Bill No. 442 being in effect from passage, the sections of the Code of West Virginia, 1931, as amended, establishing the Education and State Employees Grievance Board and authorizing the existing grievance system were repealed upon passage of the Bill on the seventh day of March, two thousand seven; and

WHEREAS, due to internal effective dates contained within the provisions of Senate Bill No. 442, however, the new West Virginia Public Employees Grievance Board and the new grievance procedures will not become effective until the first day of July 1, two thousand seven, *see* W. Va. Code §6C-3-1, *et seq.*; and

WHEREAS, as a result of this technical discrepancy between the conflicting effective dates of Senate Bill No. 442, uncertainty has arisen with regard to the grievance procedures available to public employees in the interim period between March 7, 2007 and July 1, 2007; and

WHEREAS, in numerous provisions throughout Senate Bill No. 442, the Legislature expressed its intent that the existing Education and State Employees Grievance Board and the existing grievance process would remain in effect during this transition period and that the new grievance procedure would not be utilized until July 1, 2007, including the following:

(i) in the newly-enacted subsection (d), section one, article two, chapter six-c, the Legislature provided that “~~effective the first day of July, two thousand seven~~, any reference in this code to the education grievance procedure, the state grievance procedure, chapter eighteen of this code or article six-a, chapter twenty-nine of this code, or any subsection thereof, shall be considered to refer to the appropriate grievance procedure pursuant to this article.”;

(ii) in the newly-enacted subsection (e), section one, article two, chapter six-c, the Legislature provided that “~~any grievance proceeding which is in process on the effective date of the enactment of this article~~ will be completed as expeditiously as possible, and all outstanding orders for hearings must be completed by the first day of July, two thousand seven.”; and

(iii) in the newly-enacted subsection (a), section one, article three, chapter six-c, the Legislature provided that “~~[e]ffective the thirtieth day of June, two thousand seven,~~ the Education and State Employees Grievance Board, and the employment of the hearing examiners and administrative law judges under the board, terminate.”; and

WHEREAS, these provisions clearly indicate the Legislature’s intent that the Education and State Employees Grievance Board would remain in existence until June 30, 2007 and that the existing grievance procedure would remain applicable to grievances filed by public employees on or before that date; and

WHEREAS, any interpretation of the technical discrepancy between the competing effective dates of Senate Bill No. 442 that would result in the absence of a grievance process for public employees until July 1, 2007 would ultimately pervert the intent of the Legislature so as to visit an irrational and unfair result on public employees and state agencies.

NOW THEREFORE I, JOE MANCHIN III, by virtue of the authority vested in me as Governor of the State of West Virginia, do hereby **ORDER** that:

1. The Education and State Employees Grievance Board, as constituted prior to March 7, 2007, is hereby continued until June 30, 2007.
2. All grievances and appeals pending in the grievance system on or before June 30, 2007, shall be administered pursuant to the provisions of article twenty-nine, chapter eighteen of the Code of West Virginia, 1931, as amended, and/or the provisions of article six-a, chapter twenty-nine of said Code, as applicable, as set forth prior to March 7, 2007.
3. The rules established by the Education and State Employees Grievance Board in effect on March 7, 2007, shall remain in effect until they are amended, modified or repealed by the West Virginia Public Employees Grievance Board: *Provided*, That any such rules that conflict with or are inconsistent with the provisions of chapter six-c of the Code of West Virginia, 1931, as amended, shall remain in effect until June 30, 2007.

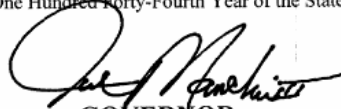
4. The specified time limits applicable to pending grievances and appeals pursuant to paragraph 2, *supra*, may be extended to a date certain by mutual written agreement of the parties.

5. Consistent with the provisions of this Order and the provisions of West Virginia Code § 6C-2-2(e), any grievance proceeding which is in process on the effective date of Senate Bill No. 442 will be completed as expeditiously as possible, and all outstanding orders for hearings must be completed by the first day of July, two thousand seven.

6. The abolition of the Education and State Employees Grievance Board and the creation of the West Virginia Public Employees Grievance Board shall in no way hinder any ongoing programs, benefits, litigation, or grievance procedures.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

DONE at the Capitol in the City of Charleston, State of West Virginia, this the eighth day of May, in the year of our Lord, Two Thousand Seven, and in the One Hundred Forty-Fourth Year of the State.


GOVERNOR



By the Governor


SECRETARY OF STATE